I value morality because ought implies moral obligation.

Morality requires respect for human autonomy. **Nozick 74** writes[[1]](#footnote-1)

**Individuals are ends and not merely means;** they may not be sacrificed or used for the achieving of other ends without their consent. **Side constraints express the inviolability of other persons.** But why may not one violate persons for the greatest social good? Individually, we each sometimes choose to undergo some pain or sacrifice for a greater benefit or to avoid a greater harm: we go to the dentist to avoid worse suffering later; we do some unpleasant work for its results; some persons diet to improve their health or looks; some save money to support themselves when they are older. In each case, some cost is borne for the sake of the general overall good. Why not, similarly, hold that some persons have to bear some costs that benefit other persons more, for the sake of the overall social good? But **there is no *social entity*** with a good **that undergoes** some **sacrifice for its own good. They are only individual people**, different individual people, **with** their all **individual lives. Using one** of these people **for the benefit of others uses him and benefits the others. Nothing more.** What happens is that something is done to him for the sake of others. **Talk of** an overall **social good covers this up.** To use a person in this way does not sufficiently respect and take account of the fact that he is **a** separate **person**, that his is the only life he has. He **does not get some overbalancing good from his sacrifice, and no one is entitled to force this upon him** – least of all a state or government that claims his allegiance (as other individuals do not) and that therefore scrupulously must be neutral between its citizens. The moral side constraints upon what we may do, I claim, reflect the fact of our separate existences. They reflect the fact that no moral balancing act can take place among us; there is no moral outweighing of one of our lives by others so as to lead to a greater overall social good. There is no justified sacrifice of some of us for others.

Only democracy respects the freedom of all individuals. The foundation of democracy is equal liberty. **Christiano 6** writes[[2]](#footnote-2)

Many democratic theorists have argued that **democracy is a way of treating persons as equals when there is good reason to impose** some kind of **organization on their shared lives but they disagree about how best to do it.** On one version, defended by Peter Singer (1973, pp. 30-41), **when people** insist on **differ**ent ways of arranging matters properly, **each person** in a sense **claims a right to be dictator** over their shared lives. **But these claims to dictatorship cannot all hold up**, the argument goes. **Democracy embodies a** kind of peaceful and **fair compromise among these conflicting claims** to rule. **Each compromises equally on what he claims as long as the others do, resulting in each having an equal say over decision making.**

Thus the standard is **consistency with equal liberty under law**.

Only retribution is consistent with democratic commitment to equality.

**Markel and Flanders 10**[[3]](#footnote-3)

Even against a quickly repentant offender, **retributive punishment** is warranted to **effectuate[s]** a liberal **democracy's commitment to** the principle of **equal liberty under law. In a** liberal **democracy, punishment serves to fulfill** part of the promise of **equality, because each citizen is burdened by an obligation to obey** those **laws that have been reasonably crafted**, enforced, **and applied.** When someone flouts a legitimate law, he elects to untether himself from the common enterprise of living together peaceably under a common law. He is not merely flouting a particular law with which he may disagree, but rather he is also defecting from an agreement about the basic structures of liberal democracy that he (would have) made as a reasonable person in concert with other reasonable people. **By his act, the offender implicitly says, "I have greater liberty than you." He** cuts himself off from the social order and **elevates himself above his fellow citizens, notwithstanding that all should enjoy equal liberty under the rule of law in a liberal state.** 08 Note that it does not matter that few people, if given the chance, would seek to steal, rape, or murder.1 09 All that matters is that, ex ante, the offender can be seen as defecting from a legitimate legal order to which she has good reason to give allegiance," 0 and that in defecting she demonstrates that she has taken license to do what others are not entitled to do. If the state establishes no institution to threaten punishment credibly, the offender's implicit or explicit claim to superiority over others commands greater plausibility than it would if the state had created such an institution.1

1. Robert Nozick. “Moral Constraints and Moral Goals.” Anarchy, State and Utopia, New

   York: Basic Books, 1974. p 31‐33 [↑](#footnote-ref-1)
2. Christiano, Thomas (University of Arizona). *Democracy,* Stanford Encyclopedia of Philosophy.Jul 27, 2006. <http://plato.stanford.edu/entries/democracy/#NonInsVal> [↑](#footnote-ref-2)
3. Dan Markel (D'Alemberte Professor, Florida State University College of Law; A.B., Harvard University; M.Phil., University of Cambridge; J.D., Harvard Law School), and Chad Flanders (Assistant Professor, Saint Louis University School of Law; J.D., Yale Law School; Ph.D. (Philosophy), University of Chicago). “Bentham on Stilts: The Bare Relevance of Subjectivity to Retributive Justice,” 98 Cal. L. Rev. 907 (2010). http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1093&context=californialawreview [↑](#footnote-ref-3)